

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Abdur Rahman

Mr. Justice Dr. Shah Nawaz Memon

Income Tax Reference Application No. 163 of 2025

Commissioner Inland Revenue, Zone-VI, Karachi Vs. M/s Foundation Public School
(Pvt.) Limited, Karachi

Date of hearing : 18.09.2026

Date of decision: 05.10.2026

Applicant : Through M/s. Ghazi Khan Khalil & Ameer Nausherwan Adil,
Advocates

Respondent : Through Mr. M. Hasham Khan & Akhtar Ali Memon, Advocates.

J U D G E M E N T

DR. SHAH NAWAZ MEMON, J.: — This reference under section 133(1) of the Income Tax Ordinance, 2001 (“the Ordinance”) is directed against the order of the learned Appellate Tribunal Inland Revenue, Karachi dated 04.02.2025 passed in I.T.A. No. 23/KB/2025 for tax year 2023. It raises a short but recurring question upon the accrual basis of accounting, namely in which tax year a school which accounts upon that basis derives the admission fee and the tuition fee which it collects before the session to which they relate has begun.

I. Facts of the case

1. The respondent is a private limited company which operates schools. For tax year 2023 it filed its return of income declaring income of Rs. 103,227,581, which took effect as a deemed assessment order under section 120 of the Ordinance. Upon examination of the record the Additional Commissioner amended that assessment under section 122(5A) and assessed income at Rs. 324,139,114.
2. Two of the additions so made are the subject of the questions before us. The first is a sum of Rs. 166,994,556 carried in the respondent’s balance sheet as fee received in advance, being admission fee and tuition fee collected during the year but relating to the session falling in the following year, which the respondent offers for taxation in that

following year. The second is a sum of Rs. 53,916,977 claimed as gratuity, disallowed under section 21(e) of the Ordinance upon the footing that the respondent operates an unfunded and unapproved gratuity scheme.

3. The learned Appellate Tribunal deleted both additions and, the additions upon which super tax had been computed having gone, directed the assessing officer to recompute the liability under section 4C in accordance with law. Being aggrieved, the department has brought this reference.

II. The questions proposed

4. The applicant proposes the following questions of law:
 - I. “Whether under the facts and in circumstances of the case, the learned ATIR was justified to annul the addition of advance fee to income from business of current year which is chargeable to tax as per sub-section (1) and (2) of section 34 of the Income Tax Ordinance, 2001?”
 - II. “Whether under the facts and in circumstances of the case, the learned ATIR was justified in not appreciating that once the appellant offers the admission, it becomes entitled to receive admission fee and when the admission fee has been paid, it means all the events determining entitlement have occurred, hence such advance fee has to be treated as income from business during the current tax year?”
 - III. “Whether under the facts and circumstances of the case, learned ATIR was justified in ignoring that admission fee received in advance against an admission is neither refundable nor refunded by the taxpayer even if admission is cancelled / revoked / withdrawn / unavailed?”
 - IV. “Whether on the facts and circumstances of the case, learned ATIR was justified in holding that gratuity payments made directly to the employees are admissible deductions when any contribution towards gratuity which is not made to an approved gratuity fund is not admissible as deduction in terms of section 21(e) of the Income Tax Ordinance, 2001?”

III. Submissions at the bar

5. Learned counsel for the applicant argued that the respondent school had in fact received the admission fee and the tuition fee, and that having received them it was bound to account for them for taxation as and when they were received. He argued that once admission is offered and the fee is paid, every event which determines the entitlement of the school has occurred, so that in terms of section 34 of the Ordinance the

amount has become due and was liable to be accounted for in that year.

6. He laid particular emphasis upon the admission fee, which he submitted was a collection of a different order altogether. It is charged once upon enrolment and never again, it is not refundable, and it is finalised by the issue of the letter of admission. Upon its receipt, he argued, the transaction is complete and the respondent is forthwith to account for it, and the department has throughout treated the admission fee and the tuition fee as two separate collections, admission fee crystallising upon the grant of admission and the tuition fee relating to the period from which the academic year of the school commences and which is usually in August.
7. It was further argued for the applicant that the authorities upon which the respondent relies proceeded upon the Income Tax Ordinance, 1979, under which the provision governing the method of accounting was not expressed to be subject to the statute, whereas under the Ordinance of 2001 sub-section (1) of section 32 and sub-sections (2) and (3) of section 34 are each expressly made “subject to this Ordinance”, with the consequence that the method of accounting now yields to the other provisions of the Ordinance and all the provisions are to be read together.
8. Learned counsel for the respondent argued that under section 34 the events which constitute income are complete only when the obligation is complete, that is to say when the fee received in advance is applied to the purpose for which it was collected, the session having commenced and the school having performed. He argued that the accrual basis is connected with the performance of the agreement and not with the moment of receipt; that the respondent, being a company, is bound by sub-section (2) of section 32 to account for its business income upon an accrual basis and has consistently done so over a decade, the advance fee of each year being offered in the year to which it pertains; and that the same amount stands offered and taxed in tax year 2024. He placed reliance upon the judgment of the Islamabad High Court in *Askari Commercial Bank*.
9. The course of the argument narrowed the controversy considerably, and it is convenient to record here what was and what was not in dispute. It was accepted on both sides that the respondent charges two

payments and no more. The first is the admission fee, a one-time payment made upon the grant of a place, which is not charged again in any later year of the child's schooling. The second is the tuition fee, charged for the session, an advance being taken at the outset and the balance collected monthly, quarterly or for the year in advance as the case may be.

10. Learned counsel for the applicant pressed, repeatedly, that the admission fee is not refundable, and that a child who is granted a place and thereafter does not join the school is not entitled to its return, whatever may be the position of the tuition fee under the respondent's refund policy. Learned counsel for the respondent did not controvert that at any stage. His answer was that the fee must nonetheless be connected with the performance of the obligation to teach the child and to accommodate him in the school. Upon the tuition fee the dispute is confined to the year of its taxability, the applicant contending that it must be offered upon receipt and the respondent that it is not derived until the teaching for which it is the price is given.
11. In rebuttal, learned counsel for the applicant reiterated that the moment the amounts are received the taxpayer is bound to account for them for taxation.
12. We have heard the learned counsel for the parties, perused the record and the applicable law, along with the reported judgments which we proceed to examine.

IV. The scheme of sections 32 to 34

13. The controversy falls to be resolved upon the language of three sections, which it is convenient to set out:

“32. Method of accounting.— (1) Subject to this Ordinance, a person's income chargeable to tax shall be computed in accordance with the method of accounting regularly employed by such person.

(2) Subject to sub-section (3), a company shall account for income chargeable to tax under the head “Income from Business” on an accrual basis, while other persons may account for such income on a cash or accrual basis.

(3) The Board may prescribe that any class of persons shall account for income chargeable to tax under the head “Income from Business” on a cash or accrual basis.

(4) A person may apply, in writing, for a change in the person's method of accounting and the Commissioner may, by order in writing, approve such an application but only if satisfied that the change is necessary to

clearly reflect the person's income chargeable to tax under the head "Income from Business".

(5) If a person's method of accounting has changed, the person shall make adjustments to items of income, deduction, or credit, or to any other items affected by the change so that no item is omitted and no item is taken into account more than once.

33. Cash-basis accounting.— A person accounting for income chargeable to tax under the head "Income from Business" on a cash basis shall derive income when it is received and shall incur expenditure when it is paid.

34. Accrual-basis accounting.— (1) A person accounting for income chargeable to tax under the head "Income from Business" on an accrual basis shall derive income when it is due to the person and shall incur expenditure when it is payable by the person.

(2) Subject to this Ordinance, an amount shall be due to a person when the person becomes entitled to receive it even if the time for discharge of the entitlement is postponed or the amount is payable by instalments.

(3) Subject to this Ordinance, an amount shall be payable by a person when all the events that determine liability have occurred and the amount of the liability can be determined with reasonable accuracy."

14. Four features of this scheme govern the present case. First, the choice of method is not at large. For a company, sub-section (2) of section 32 commands the accrual basis for income under the head Income from Business, subject only to a prescription by the Board under sub-section (3). The respondent is admittedly a company. The cash basis described in section 33, under which income is derived when it is received, is therefore not open to it.
15. Secondly, the Ordinance defines the two bases by reference to two different events. Under section 33 the event is receipt. Under section 34 the event is the amount becoming due. The legislature has thus deliberately separated the moment of derivation from the moment of receipt for those who account upon the accrual basis.
16. Thirdly, the accrual basis is a symmetrical rule. The same sub-section which brings income to charge before it is received allows expenditure before it is paid. A person who accounts upon that basis takes the rule as a whole; he may not have his receipts treated upon one basis and his outgoings upon another.
17. Fourthly, a change in the method of accounting is itself regulated. Sub-section (4) of section 32 places the initiative with the person and the approval with the Commissioner, and sub-section (5) requires

consequential adjustments to be made so that no item is omitted and no item is taken into account more than once.

18. Since a good deal turns upon the command in sub-section (2) of section 32, it is useful to ask what the legislature sought to achieve by it, for a provision is best understood in the light of the mischief it addresses. The legislative wisdom in denying to a company the choice which is left open to other persons appears to us to lie in the following considerations.
19. A company is a creature of statute and a perpetual legal person. It is obliged by the company law to prepare, and to have audited, annual financial statements drawn upon an accrual basis in accordance with the approved accounting standards. By requiring a company to compute its business income upon the same basis, the legislature has fastened the tax computation to a set of accounts which are independently prepared, audited and filed. The revenue thereby obtains a base which is verifiable from records the company is bound to keep for other purposes, and the taxpayer is spared the maintenance of a second and different set of books for the revenue alone.
20. Secondly, and more fundamentally, the accrual basis is the vehicle of the matching principle. Profit is not the excess of money coming in over money going out; it is the excess of the revenue earned in a period over the cost of earning it. A school which collects a fee in June for a session beginning in August will incur in the following year the salaries, rent, utilities and other costs of delivering that session, and will claim them upon an accrual basis in that year. To tax the revenue in one year and to allow the cost of earning it in the next is not to measure the profit of either year. The accrual basis exists precisely to prevent that mismatch.
21. Thirdly, the accrual basis removes from the taxpayer the power to choose the year of taxation. A company transacting in volume could, upon a receipt basis, advance or defer its liability by the simple expedient of timing its collections and its payments. By keying derivation to a legal event, the coming into existence of an entitlement, rather than to an act of cash management, the legislature placed the moment of derivation beyond the taxpayer's control. It is for that reason that the argument now advanced, which would key derivation to the moment at which money happens to be handed over, is at variance with the object of the very provision upon which the department relies.

22. Finally, the legislature has been consistent. Where the profits of a particular class of company are to be computed otherwise, it has said so in terms and has done so by reference to accounts prepared and filed under other laws, as in the case of a banking company under section 100A and the Seventh Schedule. These are departures made by express enactment, and they confirm rather than qualify the general rule.

V. The accounting principles invoked and how far the Ordinance has adopted them

23. We were addressed upon a number of principles drawn from the general body of accounting and revenue literature. Such principles are valuable as description and as a guide to the purpose of a provision, but they are not the law of this country save to the extent that the Ordinance has enacted them. Sub-section (1) of section 32 makes the method of accounting subject to the Ordinance, and it follows that where a principle and the statute diverge it is the statute which governs. It is therefore necessary to see how much of each principle the legislature has taken and in what terms.
24. The revenue recognition principle is commonly stated as requiring that income be recognised when the right to receive it is established and the amount can be determined with reasonable accuracy. The Ordinance has adopted the first limb of that statement and not the second. Sub-section (1) of section 34 derives income when it is due, and sub-section (2) fixes the moment at which it becomes due by reference to entitlement alone. The qualification as to reasonable accuracy appears in section 34 only in sub-section (3), and there only in relation to a liability. The statutory test for the recognition of income is accordingly entitlement, unqualified, and for the reasons given above that test is not answered by the receipt of money against a service which the recipient has yet to render.
25. It is of some interest that the principle in its modern statement in the approved accounting standards, by which the respondent's audited financial statements are governed, recognises revenue as control of the promised service passes to the customer, and treats consideration collected before that passing as a liability of the recipient rather than as its revenue. Upon the present facts the statutory test and the

accounting standard point in the same direction, and the respondent's balance sheet reflects both.

26. The matching principle requires that the cost of earning revenue be set against the revenue it was incurred to earn, in the same period. It is not an importation into our law but a feature of it. Sub-section (1) of section 34 allows expenditure when it is payable, and sub-section (1) of section 20 allows a deduction for expenditure incurred wholly and exclusively for the purposes of business in computing the income chargeable under that head. The addition under challenge would set the principle aside, for the fee for the session would be brought to charge in one year while the salaries, rent, utilities and other costs of delivering that very session fell for deduction in the next. Neither year would then disclose the profit of the respondent's business, which is the figure the Ordinance seeks to tax.
27. The all-events test, as stated in the literature from which the expression is drawn, covers both sides of the account: it fixes the right to receive income, and it determines the liability for an expense. Our legislature has taken one half of it only and has placed that half in sub-section (3) of section 34, which deals with the incurring of expenditure. That the two sub-sections occupy separate fields is borne out by the manner in which sub-section (3) has been applied. In *Telenor Pakistan*¹ the Islamabad High Court read sub-section (1) of section 34 in conjunction with sub-section (3) in order to determine whether an unrealised exchange loss was an allowable expense, and held the concept of reasonable accuracy to be a primary consideration in that enquiry. The all-events test, with its qualification as to reasonable accuracy, was thus brought to bear upon a liability; it was not employed to fix the year in which income is derived. It may be added that in those systems in which the test is applied to income as well, the treatment of payments received in advance of performance has required specific provision of its own, which itself suggests that the general test does not supply the answer. We deal with the argument founded upon this test in the section which follows.
28. As to the economic performance rule, we do not find it necessary to enter upon it. It has no counterpart in the Ordinance, which stops at the all-events test in sub-section (3) of section 34, supplemented by the

¹ *Messrs Telenor Pakistan (Pvt.) Ltd. v. Appellate Tribunal Inland Revenue, Islamabad* [2024 PTD 619].

provision in sub-section (5) which brings an unpaid liability back to charge in the fourth year. It is in any event a rule addressed to the allowance of a deduction, whereas this reference is concerned with the derivation of income, and it therefore does not arise for decision. We observe only that the idea which underlies it, that a liability is not to be recognised until the performance for which it is owed has taken place, is the mirror of the proposition upon which the respondent succeeds upon the first three questions. The conclusion in *Telenor Pakistan*, that a loss which is notional and has not been sustained is not an allowable expense, rests upon the same footing as the conclusion we reach here, that a sum which has not yet been earned is not income of the year of its collection.

VI. The “all events” test and its place in the Ordinance

29. A good deal of the argument for the applicant rested upon the proposition that all the events which determine the income had occurred once admission was offered and the fee was paid. The expression “all the events” is not to be found in those parts of section 34 which govern the derivation of income. It occurs in sub-section (3), which provides that an amount shall be payable by a person when all the events that determine liability have occurred and the amount of the liability can be determined with reasonable accuracy.
30. Sub-section (3) governs the incurring of expenditure. The legislature, having adopted an entitlement test for the derivation of income in sub-section (2), adopted an all-events test for the incurring of expenditure in sub-section (3). The two tests occupy different fields, and a test framed for the deduction side of the computation cannot be carried across to the charging side. To do so is to read into sub-section (1) of section 34 a condition which the legislature placed elsewhere and for another purpose.
31. Even if the enquiry suggested by the applicant is undertaken upon its own terms it does not advance the matter. The event which completes the respondent’s title to the fee is the delivery of the session for which it was charged. Until that event occurs the events which determine entitlement are not complete, and the amount is not due within the meaning of sub-section (2) of section 34.

VII. The authorities and their bearing upon the question

32. We have thought it right to examine how the courts have approached the accrual basis, and it is convenient to group the decisions by the proposition for which they stand rather than to take them one by one.
33. The first group establishes that accrual is keyed to performance and not to payment. In *Bison Field Estate*² the assessee, upon the mercantile system, had pooled coffee in one year and received part of the price in later years, and it was held that the whole of the consideration accrued in the year of the sale. The reason is that the sale was the act of performance which perfected the seller's right to the price; the later payments were the discharge of a right already acquired. The case is instructive for the present controversy because it shows the trigger to be the performance of the bargain, the payment being immaterial whether it comes earlier or later. Applied here, that approach yields the division we have made: for the tuition fee the performance is the delivery of the session, which had not occurred, while for the admission fee the performance is the grant of the place, which had.
34. The second group concerns revenue collected in advance of the service to which it relates. In *Hindustan Computers*³ the assessee had received annual maintenance charges and claimed a deduction for the portion attributable to the unexpired period of the maintenance contracts. It was held that the treatment did not amount to a change from the mercantile to the cash system and that the finding upon it was a finding of fact. The reasoning is directly in point. Charges collected for a period of service yet to run are not, upon the mercantile system, the revenue of the year of collection; the unexpired portion stands over to the year in which the service is rendered. That is the treatment which the respondent has adopted, and it is the correct treatment of its tuition fee. It does not reach a charge which buys no period of service at all.
35. The third group answers the course taken in the amended assessment. It is settled that a person upon the mercantile system cannot maintain a cash treatment for a single transaction or a single class of receipts

² *Bison Field Estate v. Inspecting Assistant Commissioner* [2001 PTD 2548].

³ *Commissioner of Income-tax v. Hindustan Computers Ltd.* [2000 PTD 1014].

while retaining the mercantile system for the rest.⁴ What may not be done by the taxpayer may not be required of him either. So far as the tuition fee is concerned, the effect of the addition is to place one class of a company's receipts upon the basis described in section 33 while its remaining receipts and the whole of its expenditure continue upon the basis described in section 34. Sub-section (2) of section 32 does not admit of that division, and sub-sections (3) and (4) of section 32 provide the only routes by which the basis may be altered.

36. The fourth group concerns the method itself. The Honourable Supreme Court in *National Bank of Pakistan*⁵ held that an assessee is not confined to a single basis and may regularly employ a mixed basis, and that whether a basis has in fact been regularly employed is a question of fact. The method of accounting, once regularly employed and not contrary to any provision of the Ordinance, is thus the measure by which income is to be computed.
37. *K.C.P. Limited* is the fifth, and it marks the line between the two components. Beyond the proposition already noticed, it establishes that money realised in the ordinary course of trading is a trading receipt of that year notwithstanding a possible future obligation to refund, the remedy being a deduction in the year of any refund. That reasoning governs the admission fee, which the respondent has earned and may in a remote contingency be called upon to return. It does not govern the tuition fee, which the respondent has not yet earned and holds against a performance it is bound to render. The distinction is between money already one's own though defeasible, and money not yet one's own at all.
38. *Monnoowal Textile Mills* is relied upon for the effect of the words "subject to this Ordinance". We have accepted the principle it lays down and have explained why it does not reach the first three questions: that case turned upon the existence of a specific provision, section 21(e), which displaced the result of the mercantile method, and no comparable provision governs a fee collected in advance.
39. It is useful to notice the position under the corresponding Indian provision, for the two statutes are differently constructed and the

⁴ *Commissioner of Income-tax v. Super Scientific Clock Co.* [2001 PTD 273]; *Commissioner of Income-tax v. Agricultural Farms Ltd.* [2001 PTD 3050].

⁵ *Deputy Commissioner of Income Tax v. National Bank of Pakistan* [2019 SCMR 1011], approving *Muslim Commercial Bank Ltd. v. Deputy Commissioner of Income Tax* [2004 PTD 1901].

difference is itself instructive. Section 145 of the Income Tax Act, 1961 requires income to be computed in accordance with either the cash or the mercantile system regularly employed by the assessee, but it nowhere defines those systems. What is there left to the courts, our legislature has enacted: sections 33 and 34 state in terms when income is derived upon each basis. The Indian decisions therefore supply the principle, while with us the principle has statutory form, and where the statute speaks it governs.

40. Upon that principle the commentary states the position shortly. Under the pure mercantile system income can be taxed only as the income of the year of accrual, and under the pure cash system only as the income of the year of receipt; and where an assessee is assessable upon the accrual basis it is not open to the department to tax him upon the cash basis in the year in which he receives an amount.⁶ That is precisely what sections 33 and 34 enact, and it is the answer to the argument that receipt by itself attracts the charge.
41. The same commentary marks the limit of the proposition, and the limit is as important as the proposition itself. The assessing officer is not bound by the figure of profit shown in the accounts, and he may include an amount which does not figure in them where its inclusion is required by the assessee's own method; that is to say, he may, without deviating from the method, make such adjustments as are necessary for giving full and true effect to that method itself. What he may not do is to require a departure from the method for a particular year or for a stray transaction; and where the authorities have accepted a system of accounting and taxed upon it for a number of years, they may not suddenly seek to tax upon a different basis in a particular year.⁷ The line between an adjustment which gives effect to the accrual basis and a departure which abandons it is the line upon which this case turns. To bring the tuition fee to charge upon its collection is a departure. To bring an amount to charge in the tax year in which the entitlement to it arose is an application of the very method the respondent employs.
42. Standing back, the authorities disclose a single and consistent thread. Upon the accrual basis the year of taxation is fixed by the legal event which perfects the taxpayer's right to the money, and neither the earlier

⁶ *Kanga, Palkhivala & Vyas, The Law and Practice of Income Tax*, commentary upon section 145 of the Income Tax Act, 1961, at pp. 2562-2563.

⁷ *Ibid.*, at p. 2562.

nor the later passage of cash disturbs it. The argument for the applicant, put at its widest, would make the passage of cash decisive in the one direction, while the Ordinance and the authorities have made it immaterial in both. But the same thread, followed to the admission fee, shows that the right there was perfected upon the grant of the place, and the charge follows the right.

VIII. The expression “subject to this Ordinance”

43. We take next the argument that the earlier authorities are of no assistance because the provision governing the method of accounting was not, under the repealed law, expressed to be subject to the statute. The premise is correct so far as it goes. Sub-section (1) of section 32 in its original form was confined to income under the head Income from Business and contained no such words; the expression “Subject to this Ordinance”, and the extension of the sub-section to a person’s income chargeable to tax generally, were introduced by the Finance Act, 2003.
44. The proposition which the applicant draws from that amendment is also, in our view, correct. A method of accounting is a means of measurement; it is not a source of charge, and it cannot prevail against a substantive provision of the Ordinance. That is the principle upon which the Lahore High Court proceeded in *Monnoowal Textile Mills*⁸, where the words “subject to this Ordinance” in sub-section (3) of section 34 were held to reaffirm the legislative intent that a mercantile method could not be used to claim a deduction which section 21(e) forbids. It is also the principle recognised by this Court in *Excell Pakistan*⁹, where it was held that an entry made in accordance with the system of accounting regularly employed is to be treated as valid and allowable if it is not contrary to other provisions of law. We respectfully adopt both statements.
45. It is right to record, however, that the principle does not depend upon the words alone. The corresponding Indian provision, section 145 of the Income Tax Act, 1961, makes the computation subject only to its own sub-section (2); and yet it is settled there that the provision for the

⁸ *Commissioner Inland Revenue, Zone-II, LTU, Lahore v. Messrs Monnoowal Textile Mills Limited* [2019 PTD 1811].

⁹ *Commissioner Inland Revenue, Zone-I v. Messrs Excell Pakistan (Pvt.) Ltd.* [2022 PTD 1535]; *Pakistan Industrial Credit and Investment Corporation Ltd. v. Commissioner of Income Tax* [2006 PTD 1400].

computation of income cannot derogate from the charging section, so that the charge upon income accruing or received cannot be avoided by any method of accounting.¹⁰ The words introduced into sub-section (1) of section 32 by the Finance Act, 2003 therefore made express in our statute what would in any event have followed. They fortify the principle for which the applicant contends; they do not displace the earlier authorities as completely as the argument supposed.

46. The difficulty for the applicant lies in the application of the principle rather than in the principle itself. The words “subject to” are words of subordination. They tell us what is to happen when the method of accounting and some other provision of the Ordinance would otherwise lead to different results: in that event the other provision prevails. They do not authorise the substitution of a different method of accounting, and they do not operate at all unless such a competing provision is identified.
47. The Ordinance contains a number of provisions which do displace the ordinary result of accrual, and each of them is expressed. Section 21(e) disallows a contribution to an unapproved fund however the accounts may treat it. Sub-section (5) of section 34 brings to charge, in the fourth year, a liability for which a deduction was allowed and which remains unpaid. The Fourth, Fifth and Seventh Schedules substitute their own computations for insurance companies, exploration and production undertakings and banking companies respectively. These are the provisions to which the words “subject to this Ordinance” are addressed.
48. No provision of that character has been shown to us in relation to fee collected in advance of the session. The applicant did not point to any section of the Ordinance which requires such a receipt to be brought to charge in the year of collection, and we are aware of none. The words “subject to this Ordinance” therefore have nothing here upon which to operate, and sub-section (2) of section 34 applies according to its own terms.
49. The invitation to read the provisions together, moreover, is one we accept, and reading them together does not assist the applicant. Where the legislature intends a receipt to be charged upon receipt it has said

¹⁰ *Kanga, Palkhivala & Vyas, The Law and Practice of Income Tax*, commentary upon section 145 of the Income Tax Act, 1961, at pp. 2562-2563.

so: in section 33 for a person accounting upon the cash basis, and in sub-section (1) of section 12, which charges salary “received by an employee in a tax year”. Sub-section (2) of section 32 having closed the cash basis to a company, and no provision having been made to charge fee collected in advance upon its collection, the argument seeks by construction a result which the statute has not enacted. To read the provisions together is to read sections 32, 33 and 34 as a scheme in which receipt and accrual are alternatives; it is not to import the test of the one into the field of the other.

IX. When is an amount “due” to a person

50. Upon the accrual basis the derivation of income turns upon a single expression, “due”. Sub-section (2) of section 34 supplies its meaning. An amount is due to a person when that person becomes entitled to receive it, and it is due “even if the time for discharge of the entitlement is postponed or the amount is payable by instalments”.
51. Those concluding words disclose the office which the sub-section performs. It is addressed to the case in which entitlement has arisen but payment has not followed. Its purpose is to prevent a taxpayer upon the accrual basis from deferring income by pointing to the fact that the money is not yet in hand. It therefore enlarges the charge beyond receipt. It does not state, and upon its language cannot be read as stating, the converse proposition that an amount becomes due because it has been received. Receipt is the criterion of section 33 and not of section 34.
52. This is the sense in which the expression was construed by the Islamabad High Court in *Askari Commercial Bank*¹¹, where it was held that “entitled” cannot by any stretch of imagination be construed as having reference to actual receipt of income, and that to read the expression in isolation would render the remaining parts of sections 32, 33 and 34 redundant. That reasoning answers the argument now advanced. If entitlement does not presuppose receipt, receipt does not of itself establish entitlement.
53. What then gives rise to entitlement to receive an amount? Entitlement is a right pursuant to legal obligations and not an accounting posture. It

¹¹ *Commissioner of Income Tax (Legal), Islamabad v. Askari Commercial Bank Limited* [2018 PTD 1089].

exists when the taxpayer has acquired a right to the amount as his own, so that, in the classical formulation, a debt has been created in his favour, *debitum in praesenti, solvendum in futuro*. Unless and until such a right is created it cannot be said that an entitlement to income has accrued.¹² Where a sum is received against an obligation which the recipient has yet to perform, no such right has been acquired. The money is in his hands, but it is not yet his own; he holds it against a performance which he is bound to render and for which he must answer.

54. The respondent's business is the supply of education over a defined session, and the tuition fee is the consideration for that supply. Where the session lies in the following year, the respondent at the close of the year under assessment holds the money subject to an obligation which it has not yet discharged. Its entitlement to retain the tuition fee as its own arises as, and to the extent that, it performs. That is why the amount stands in its balance sheet as a liability described as fee received in advance and not in its profit and loss account. The accounting treatment follows the legal position; it does not create it.
55. We would add, lest the point be misunderstood, that the entries are not decisive either way. Income tax is a levy upon income, and an entry in the books cannot make income of that which is not income, just as the absence of an entry cannot unmake income which has in truth been earned. The enquiry is always into the true nature and quality of the receipt.¹³ Undertaken upon the tuition fee, that enquiry yields the answer that at the close of the year the sum was a receipt held against a performance yet to be rendered.
56. It was not disputed that the tuition fee is liable to be refunded in accordance with the respondent's own policy where a child does not join or leaves the school. The respondent's title to it is therefore not perfected by its collection, and remains answerable to the performance of the teaching for which it is charged.

X. The admission fee stands upon a different footing

¹² *E. D. Sassoon & Co. Ltd. v. Commissioner of Income-tax* [(1954) 26 ITR 27], cited with approval in *Cotton Agents Ltd. v. Commissioner of Income-tax* [1960 PTD 1300].

¹³ *Godhra Electricity Co. Ltd. v. Commissioner of Income-tax* [1998 PTD 73]; *K.C.P. Limited v. Commissioner of Income-tax* [2001 PTD 1518].

57. The sum of Rs. 166,994,556 is, however, not of one character. It is common ground that it comprises two distinct collections, and the assessing officer treated them as two. The first is the admission fee. It is charged once, when a child is enrolled, and is not charged again in any later year of the child's schooling. It is not refundable. The second is the tuition fee, which is charged for each session and is the price of the teaching to be given in that session. The reasoning in the preceding section proceeds upon the tuition fee, and we are satisfied that it is correct as to that component. The admission fee requires separate consideration, and upon consideration we are unable to place it upon the same footing.
58. The distinguishing feature of the admission fee, pressed throughout for the applicant and never controverted, is that even though it may relate to the admission of a student for a period that may commence at the beginning of the next academic year and hence in a different tax year, it is at all times not refundable. A child who is granted a place is charged the admission fee and the tuition fee. Should the child thereafter not join the school, the tuition fee is liable to be refunded in accordance with the respondent's own policy, as was accepted at the bar, but the admission fee is not; the school is under no obligation to return it. The feature is not incidental to the applicant's case. It is embodied in the third question proposed, which asks whether the learned Appellate Tribunal was justified in ignoring that the admission fee is neither refundable nor refunded even if the admission is cancelled, revoked, withdrawn or not availed. Learned counsel for the respondent did not, at any stage, dispute it. His answer was of a different kind, namely that the fee must be connected with the performance of the obligation to teach the child and to accommodate him in the school.
59. That answer does not meet the point. Where a sum is liable to be returned unless the recipient performs, its retention is conditional upon performance and the recipient's title is incomplete until he performs. That is the position of the tuition fee. Where a sum is not liable to be returned at all, the recipient's right to keep it depends upon nothing which he has yet to do. That is the position of the admission fee. The obligation to teach the child, when he joins, is answered by the tuition fee charged for the session and is answered afresh by the tuition fee charged for every session that follows. It is not the consideration for a

payment which is made once, is never repeated, and is kept whether the child is taught or not.

60. The distinction which the two components disclose is a familiar one in the general law of contract. Where the consideration upon one side has been wholly rendered, the bargain is, as to that party, executed, and what he has received is his own; where something remains to be done upon his part it is executory, and what he holds he holds against his own outstanding obligation. The same idea underlies the distinction between a sale and an agreement to sell, the one being complete upon the performance of the reciprocal considerations and the other leaving obligations outstanding upon one side or the other.¹⁴ Upon that view the admission fee answers a consideration which the school has executed i.e., the admission of the student and which is complete the moment the fee is paid, while the tuition fee is a consideration which remains executory as the obligation to teach will be for the next academic year. We would not, however, rest the decision upon a classification borrowed from another branch of the law. The test under section 34 is entitlement to receive, and the classification is useful only because it describes, in familiar terms, when entitlement to receive is and is not complete.
61. Applying sub-section (2) of section 34, the respondent becomes entitled to receive the admission fee when it grants the admission and the fee is charged. At that moment a right to the money as its own is created in its favour, and there is no outstanding performance upon which that right is conditioned. The amount is therefore due to it within the meaning of the sub-section, and being due it is derived under sub-section (1) in the tax year in which the entitlement arose, and not in the later year in which the session happens to begin.
62. There is a further and practical difficulty in the way of deferring the admission fee, and it is decisive. To defer a receipt is to attribute it to some later period of performance. That presupposes a period which can be identified. Here there is none. Nothing in the arrangement binds the school to teach the child for one year, or for three, or for the whole of his schooling, and no admission fee is charged again in any of those years. There is accordingly no term of years across which the fee could

¹⁴ Promises which form the consideration or part of the consideration for each other are "reciprocal promises": section 2(f) of the Contract Act, 1872. The cognate distinction between a sale and an agreement to sell appears in section 4 of the Sale of Goods Act, 1930, which turns upon the passing of property in goods and is mentioned here only by way of illustration.

be spread, and no later tax year with a better claim to it than the year in which the entitlement arose. To postpone it by a single year, as the respondent does, is not to match it with anything at all.

63. Nor does the matter call for any enquiry into the character of the charge. The two components were accepted on both sides, and the non-refundable character of the admission fee was asserted repeatedly for the applicant and left uncontradicted. Upon a reference under section 133 this Court answers the question of law upon the facts admitted or found, and it would not be right to convert a matter uncontroverted at the bar into a matter for enquiry, nor to require the parties to produce the prospectus, the letter of admission or the fee policy in proof of a fact which they did not dispute.
64. The prospect that the school might have to return the admission fee should it close before the session began does not hold the accrual in suspense. A right which has come into existence is not suspended because a future event may require the money to be given back, the remedy in that event lying in a deduction in the year of the refund. That much is illustrated by *K.C.P. Limited*, although we would not press the analogy further, the receipt there having been realised in the ordinary course of trading and the prospect of restitution being of a different order.
65. We should guard against a misunderstanding of what has been said about the method of accounting. Whether a method has in fact been regularly employed is a question of fact, and the finding of the learned Appellate Tribunal upon that question is not open to review in a reference. Whether a method regularly employed produces the result which the Ordinance requires is a different question, and it is one of law. Consistency of treatment establishes the first; it cannot by itself establish the second. Where section 34 fixes the year in which an amount is derived, a method of accounting, however regularly employed, must yield to it, sub-section (1) of section 32 being expressly subject to the Ordinance. That is the proposition which we have accepted earlier in this judgment, and we apply it here without qualifying anything said as to the tuition fee.
66. For these reasons the deletion of the addition cannot be sustained in so far as it relates to the admission fee. One matter alone is left over. The record does not disclose what part of Rs. 166,994,556 is referable to

the admission fee, the two collections having been carried in a single account and dealt with together throughout. That is a matter of computation, to be worked out by the learned Appellate Tribunal and by the authorities giving effect to its order under sub-section (5) of section 133, upon the respondent's own records and after hearing it, and we say nothing upon the figures.

XI. The method regularly employed and the consequence of the addition

67. The learned Appellate Tribunal had before it a tabulation covering ten years which showed that the respondent had followed the same treatment throughout, the advance fee of each year being carried forward and offered in the year to which it pertained, and that the amount presently in issue was offered in the return for tax year 2024 and the tax thereon paid. That finding, which is one of fact, has not been shown to be without material.
68. The consequence of the addition, moreover, is that the same sum stands charged in tax year 2023 and in tax year 2024. Sub-section (5) of section 32 requires, where a method of accounting is changed, that adjustments be made so that no item is omitted and no item is taken into account more than once. So far as the tuition fee is concerned, a construction which produces double taxation without any change of method at all is not one which the Ordinance invites, and what would be in issue is at most the deferment of a liability by one year upon a basis consistently applied and not any escape from it. The commentary upon the corresponding Indian provision states the principle in terms: an assessee taxed in respect of book profits which have accrued but have not been received cannot be taxed upon the same sums of money when they are actually received in a later year of assessment.¹⁵
69. So far as the admission fee is concerned, the principle against charging one amount twice is engaged in a different way. The amount is now held to have been derived in tax year 2023, and it stands offered and taxed in tax year 2024. We are conscious that the assessment for tax year 2024 is not itself before us and that we cannot modify it in these proceedings. But the charge upon the same sum for two years would, upon this judgment, be a mistake apparent from the record of the later

¹⁵ *Ibid.*, at p. 2559.

year within the meaning of section 221 of the Ordinance, and the officer giving effect to this judgment is expected to act upon it so that the respondent is not left to bear tax twice. The Ordinance provides the machinery, and it is to be used.

XII. The gratuity payments

70. The fourth question stands upon a narrow point of construction. Section 21(e) disallows “any contribution made by the person to a fund that is not a recognized provident fund, approved pension fund, approved superannuation fund or approved gratuity fund”. The subject of the clause is a contribution made to a fund. Where there is no fund, and payment is made by the employer directly to the employee, the clause is not attracted upon its own terms.
71. The learned Appellate Tribunal found upon the material before it that the sum of Rs. 53,916,977 represented gratuity actually disbursed to employees, tax having been deducted at source under section 149, and that the provision for gratuity of Rs. 21,005,452 had itself been added back in the return of income. Upon that finding the disallowance could not rest upon section 21(e), because there was neither a fund nor a contribution to one.
72. It is right to define the scope of what we decide. The disallowance was made under section 21(e) and under that provision alone, and the questions proposed put the matter upon that provision. Whether the payments satisfy the general condition in sub-section (1) of section 20, or fall foul of any other clause of section 21, was neither the basis of the disallowance nor the subject of argument before us, and we express no opinion upon it. What we decide is that section 21(e) does not reach a payment made directly to an employee where no fund exists and no contribution to a fund has been made.
73. The judgment relied upon by the department, *Monnoowal Textile Mills*, is upon a different footing. It concerned provisioning for gratuity and holds that a mere provision, the payment being contingent upon a future event, does not satisfy section 21(e) and cannot be claimed as a deduction under cover of the mercantile method of accounting. That proposition is not in doubt and is not in issue here, where the deduction claimed is of amounts actually paid to employees and where the provision has been added back. The admissibility of such payments

falls to be tested under the general provisions relating to deductions and not under section 21(e).

XIII. The answers to the questions

74. Question I is answered in part. Tuition fee collected in advance of the session to which it relates is not, upon its collection, an amount due to the respondent within the meaning of sub-sections (1) and (2) of section 34, and to that extent the deletion of the addition was justified. As to that component the question is answered in the affirmative, in favour of the respondent and against the applicant.
75. As to the admission fee, its non-refundable character having been asserted for the applicant and left uncontroverted, the respondent's entitlement to it is complete upon the grant of admission and is conditioned upon nothing which the respondent has thereafter to do. The fee is accordingly derived in the tax year in which the admission is granted, and not in the later year in which the session begins. As to that component Question I is answered in the negative, in favour of the applicant and against the respondent, and the deletion of the addition to that extent cannot be sustained.
76. Questions II and III are directed to the admission fee alone and are answered in the negative, that is to say in favour of the applicant department and against the respondent taxpayer.
77. Question IV is answered in the affirmative, in favour of the respondent taxpayer and against the applicant department, to the extent and upon the footing stated in Section XII.

XIV. Order

78. The reference is answered as above and is disposed of accordingly. In terms of sub-section (5) of section 133 of the Ordinance, the order of the learned Appellate Tribunal shall stand modified to the following extent. The deletion of the addition on account of tuition fee collected in advance is maintained, as is the deletion of the disallowance of gratuity. The deletion of the addition on account of admission fee is set aside and that addition is restored, to the extent of such part of Rs. 166,994,556 as is found to be referable to the admission fee. That part shall be determined by the learned Appellate Tribunal and by the authorities giving effect to its order under sub-section (5) of section 133, upon the respondent's own records and after affording it an opportunity

of being heard; the same amount shall not be charged again for tax year 2024, in the manner indicated in Section XI above; and the super tax under section 4C shall be recomputed accordingly.

79. Let a copy of this judgment be sent under the seal of this Court and the signature of the Registrar to the learned Appellate Tribunal, as required per section 133(8) of the Income Tax Ordinance, 2001.

J U D G E

J U D G E

Karachi, dated: 05th day of September 2026

Announced by:

J U D G E

J U D G E

M. Khan